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April 25, 2011

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Response to Bureau Request for Additional Information

Sandwich Isles Communications, Inc., Petition for Reconsideration,  
Wireline Competition Bureau, Docket No. 09-133

Dear Ms. Dortch:

Sandwich Isles Communications, Inc. ("SIC") hereby submits a verified statement ("SIC Statement") that provides certain information requested by the Wireline Competition Bureau ("Bureau") in the above-referenced docket. See Exhibit 1.<sup>1</sup>

SIC also submits further information in response to the National Exchange Carrier Association's ("NECA") arguments regarding the Spare Fiber Guidelines ("SFG").<sup>2</sup> See Exhibit 2.<sup>3</sup>

The Exhibit 2 materials are relevant for two reasons. First, [REDACTED] demonstrates that the SFG are binding and the demand/used and useful analysis allegedly applied by NECA is inconsistent with NECA's own rules. Second, [REDACTED] reveals that

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<sup>1</sup> The SIC Statement shows that the following facts are clear and not subject to reasonable dispute: (1) [REDACTED] percent of the Paniolo lease cost is for terrestrial facilities; (2) construction of Paniolo terrestrial fiber was necessary even if SIC had leased existing interisland undersea transport cables; and (3) SIC had legitimate concerns over the viability of existing interisland undersea cables and a reasonable basis to commit to lease Paniolo in order to get a new cable built.

<sup>2</sup> National Exchange Carrier Association, Ex Parte Presentation, WC Docket No. 09-133 (Apr. 14, 2011) ("NECA Statement").

<sup>3</sup> Exhibit 2 contains the following information [REDACTED]

NECA failed to follow its own procedures for a contested cost issue, thereby failing to adopt a uniform interpretation that would apply to all carriers.

**1. [REDACTED] NECA did not follow its rules when it purported to conduct a "Used and Useful" analysis based upon demand.**

NECA rejected inclusion of the Paniolo cable network ("Paniolo") lease costs in the SIC revenue requirement during NECA's review of SIC's cost study. NECA represented that it was required to evaluate the Paniolo lease costs under a "used and useful" standard. NECA further claimed that under the "used and useful" standard, NECA considered anticipated demand in relation to the capacity and cost of Paniolo. NECA concluded that the Paniolo cable was not "used and useful," without reference to specific, discernable standards. As a result of NECA's failure to articulate a methodology, the Bureau applied the "used and useful" doctrine to the Paniolo costs by means of a general equitable analysis.

The NECA Statement repeats the claim that NECA conducted a "used and useful" analysis of Paniolo. It claims that NECA "believed" that demand would not arise.<sup>4</sup> It also acknowledges that NECA did not conduct an engineering study.<sup>5</sup> It further asserts that the SFG are advisory and not binding on either NECA or the FCC.

The confidential information SIC supplies in this filing shows that a demand/capacity analysis (as allegedly performed by NECA) is inconsistent with [REDACTED]. It also confirms that the SFG are binding.

[REDACTED]

[REDACTED]

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<sup>4</sup> NECA Statement at 1.

<sup>5</sup> NECA Statement at 2.

<sup>6</sup> [REDACTED]

<sup>7</sup> Both [REDACTED] and the SFG interpret the same FCC rule. *See* 47 C.F.R. § 36.153.

[REDACTED] Thus, in denying SIC's costs based upon not applying the SFG, NECA deviated from its own binding rules.<sup>8</sup>

The relevance of this new information to the Order is clear. Because NECA failed to identify relevant precedence – the SFG and [REDACTED] – the Order applied a "used and useful" standard utilizing general equitable factors. The Order erred by applying an equitable standard to SIC instead of applying [REDACTED] and the SFG, which is the methodology used by the entire NECA carrier industry.

**2. The NECA procedural rules demonstrate that NECA has a process to resolve legitimate cost issues. That process is designed to "ensure uniform treatment of issues" and "equitable settlements among NECA pool members."<sup>9</sup> NECA did not utilize that process. As complained of by SIC, by not following established NECA procedures, NECA was able to treat SIC as if the cost issue was unique to SIC. [REDACTED]**

[REDACTED]

[REDACTED]

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<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>10</sup> *Id.*

<sup>11</sup> [REDACTED]

[REDACTED]

In this case, NECA purported to interpret and apply the "used and useful" standard, an FCC doctrine that is not mentioned, much less interpreted, [REDACTED]. Therefore, if NECA in fact believed that "demand" or "used and useful" were proper standards to apply to the NECA carrier community, it should have resolved the SIC cost issue through [REDACTED]. NECA did not do that. Thus, NECA's claim that it was applying a standard to SIC that applies to all other carriers is simply false.

### Conclusion

SIC requests two things at this time. First, SIC requests a meeting with the Staff to discuss information from [REDACTED]. SIC also wishes to discuss its pending motion for access to information.

Second, SIC requests that the Bureau promptly issue an order directing NECA to include all of SIC's Paniolo costs within SIC's NECA Pool revenue requirement, pending further proceedings in this case. This relief is appropriate given that [REDACTED] clearly and unequivocally states that industry practice, as embodied in the SIC cost study, must be followed unless and until the Commission rules otherwise. The Order does not constitute a contrary ruling because the Order does not address [REDACTED] or the SFG due to the failure of NECA to disclose them.

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12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

Should additional information be necessary in connection with this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Dana Frix  
James A. Stenger  
Megan E.L. Strand

Counsel to Sandwich Isles Communications, Inc.

cc: Austin Schlick  
Sharon Gillett  
Diane Griffin Holland  
Marcus Maher  
Pamela Arluk

Exhibit 1 - SIC Verified Statement

Exhibit 2 - [REDACTED]

**Exhibit 1**

**SIC Verified Statement**

**Verified Statement of Sandwich Isles Communications, Inc.  
In Response to Bureau Request for Information**

By this verified statement Sandwich Isles Communications, Inc. ("SIC") responds to the Bureau's request for information concerning the Paniolo cable network ("Paniolo"). SIC also addresses factual points raised in the National Exchange Carrier Association's ("NECA") April 14, 2011 *ex parte* filing ("NECA Statement").<sup>1</sup>

**1. Do Terrestrial Facilities Constitute █ Percent of the Paniolo Lease Cost?**

**SIC Response:** Attached hereto as Attachment A, SIC Accounting Data, is a copy of the accounting data that SIC submitted to NECA showing that █ percent of the Paniolo costs relate to the Paniolo terrestrial network. This accounting data was previously filed, but is being resubmitted with this statement for the convenience of the Bureau.<sup>2</sup> NECA has not disputed this accounting data, and SIC has consistently cited the █ percent figure for the terrestrial network cost.<sup>3</sup>

The NECA Statement simply characterizes the accounting data differently. NECA asserts that the terrestrial cost is █ percent, the undersea cost is █ percent and the remainder (█ percent) is for "costs such as land and buildings."<sup>4</sup> Thus, NECA tries to separate out the █ percent dedicated to "costs such as land and buildings," rather than acknowledging that terrestrial costs include land and buildings.

NECA has not challenged the inclusion of SIC terrestrial network costs in the NECA traffic sensitive pool ("NECA Pool").<sup>5</sup> The Paniolo terrestrial network is constructed to the same specifications as the SIC terrestrial network. As shown Attachment B, Annotated Maps of Paniolo, the Paniolo terrestrial fiber is integrated into and part of the existing network built to serve the Hawaiian Homelands ("HHL").

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<sup>1</sup> National Exchange Carrier Association, Ex Parte Presentation, WC Docket No. 09-133 (Apr. 14, 2011) ("NECA Statement").

<sup>2</sup> See Sandwich Isles Communications, Inc. Petition for Reconsideration, WC Docket No. 09-133 (Oct. 29, 2010) ("Recon Petition"), Declaration of Ben Harper ("Harper Declar.") at paras. 5 and 28 to 33 and Exhibit C.

<sup>3</sup> Comments of Sandwich Isles Communications, Inc., WC Docket No. 09-133 (Aug. 28, 2009) at n.19 ("SIC August 28 Comments").

<sup>4</sup> NECA Statement at 1.

<sup>5</sup> See, e.g., Comments of the National Exchange Carrier Association, WC Docket No. 09-133 (Aug. 31, 2009); Reply Comments of the National Exchange Carrier Association, WC Docket 09-133 (Sept. 10, 2009); Comments of the National Exchange Carrier Association, WC Docket No. 09-133 (Dec. 6, 2010).

**NECA Response:** The NECA Statement attempts to confuse the analysis by stating that SIC estimated in 2008 the terrestrial cost allocation would be ■ percent. This figure must be rejected because NECA relies upon actual data not estimates.<sup>6</sup> As noted above, however, NECA does not actually dispute the accounting data supplied in SIC's Recon Petition.

**2. Was the Construction of Paniolo Terrestrial Fiber Necessary Even if SIC Leased Undersea Cable Capacity or Paniolo Had Different Landing Points?**

**SIC Response:** Attachment B, Annotated Maps of Paniolo, illustrates that due to the location of the HHL throughout the Hawaiian Islands, SIC would have needed to construct terrestrial fiber even if: (a) the Paniolo undersea cable landed in the same locations as the Pacific Lightnet ("PLNI") and Hawaiian Telcom, Inc. ("HTI") cables; or (b) if SIC had continued leasing capacity from HTI. A specific breakdown of Paniolo terrestrial fiber by island is as follows:

■	■
■	■
■	■
■	■
■	■

Finally, at a general level, construction of the Paniolo terrestrial fiber represents a fundamental proposition – that carriers have the right to construct a unified, reliable network.

**NECA Response:** The NECA Statement does not contest the placement of terrestrial fiber. NECA simply provided maps illustrating where the Paniolo, HTI and PLNI cables land

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<sup>6</sup> NECA Statement at 1.



and what terrestrial lines were constructed as part of Paniolo.<sup>7</sup> NECA used the maps filed earlier in this proceeding by SIC and added the locations of the other cables.<sup>8</sup>

### 3. Was the Existing Lease Agreement with HTI a Sufficient Substitute for Paniolo?

**SIC Response:** The existing lease with HTI was not a sufficient substitute, and NECA's claim that SIC failed to demonstrate this is incorrect. As a preliminary matter, SIC has demonstrated that before constructing Paniolo SIC undertook an avoided cost analysis, which revealed that it would cost more to continue leasing an existing cable than to lease Paniolo.<sup>9</sup> Further, throughout this proceeding SIC has noted the age and technical limitations of the HTI cable.<sup>10</sup> The HTI cable was licensed in 1993 and constructed in 1994. Thus, SIC reasonably concluded that technological changes in submarine cable design between 1994 and 2007 limit the useful life of the HTI cable, as well as the long-term availability of capacity on the cable.<sup>11</sup>

SIC's projections are substantiated by HTI's own public filings before the Commission. As HTI has repeatedly advised the Commission, technology used in the HTI cable "severely limits [HTI's] ability to accommodate growth and to launch new services, especially broadband services."<sup>12</sup> HTI explained that cables built during that time period achieved frequency division through the use of dispersion shifted fiber whereas more modern cables use single mode fiber and accomplish frequency division by electronic components that can be upgraded without replacing the cable itself.<sup>13</sup> SIC also examined the PLNI cable and concluded that cable would

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<sup>7</sup> NECA Statement at 1-2 and Appendix 2.

<sup>8</sup> See Sandwich Isles Communications, Inc., Ex Parte Notice, WC Docket No. 09-133 (Nov. 13, 2009).

<sup>9</sup> See SIC August 28 Comments at 14-15.

<sup>10</sup> See White Paper of Sandwich Isles Communications, Inc. in Support of Inclusion of its Undersea Cable Costs in the NECA Pool, WC Docket 09-133 (June 3, 2010) at 12 ("SIC White Paper"); see also Sandwich Isles Communications, Inc., Notice of Ex Parte (July 30, 2010) ("SIC July 30 Ex Parte"); Sandwich Isles Communications, Inc., Notice of Ex Parte (Aug. 17, 2010) ("SIC August 17 Ex Parte").

<sup>11</sup> SIC White Paper at 12.

<sup>12</sup> Petition of Hawaiian Telcom, Inc. for Waiver of Sections 54.309 and 54.313(d)(iv) of the Commission rules, WC Docket No. 08-4 (Dec. 31, 2007) ("HTI Petition") at 3 (attached to SIC August 28 Comments at Exhibit 3).

<sup>13</sup> "The distance between islands and the characteristics of HT[I]'s dispersion-shifted fiber (which uses Dense Wave Division Multiplexing technology) mean that each fiber strand can support substantially fewer wavelengths than are supported by conventional single-mode submarine fiber available today, limiting overall capacity. Overcoming these limits is costly; notably, to accommodate increased demands for fiber transport capacity, HT[I] has developed and installed, at great cost, custom-engineered lasers to sustain communications along the Kauai segment of HT[I]'s fiber network." HTI Petition at 7.

not be capable of absorbing the traffic that would have to be rerouted from the obsolete HTI cable within the not too distant future.<sup>14</sup> In light of all these considerations, SIC reasonably concluded that construction of the Paniolo undersea cable was reasonable and necessary. This conclusion was proven correct when the PLNI cable failed and the HTI cable was unable to accommodate the additional traffic.<sup>15</sup>

**NECA Response:** The NECA Statement does not disagree with SIC's assertion that a long-term lease on the HTI undersea cable was not feasible. Rather, NECA attempts to skirt the question by arguing that "SIC never demonstrated to NECA that services from [HTI] were inadequate or would be insufficient in the future to handle expected demand levels."<sup>16</sup>

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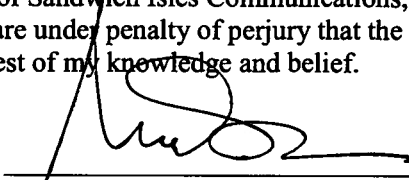
<sup>14</sup> See SIC August 17 Ex Parte; SIC White Paper at 12; SIC August 28 Comments at vi, 14-15.

<sup>15</sup> See SIC July 30 Ex Parte, SIC August 17 Ex Parte.

<sup>16</sup> NECA Statement at 3, n.7.

### **Verification**

I, Albert S.N. Hee, am the President of Sandwich Isles Communications, Inc. I have reviewed the foregoing statement and I declare under penalty of perjury that the information contained therein is true and correct to the best of my knowledge and belief.



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Albert S.N. Hee  
President  
Sandwich Isles Communications, Inc.

Dated: April 25, 2011

**Attachment A**

**SIC Accounting Data**

This Document is Withheld Pursuant to the  
Protective Order in WC Docket No. 09-133

**Attachment B**

**Annotated Maps of Paniolo**

This Document is Withheld Pursuant to the  
Protective Order in WC Docket No. 09-133

**Exhibit 2**



This Document is Withheld Pursuant to the  
Protective Order in WC Docket No. 09-133